

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**CARLOS NIEVES,**

Plaintiff,

v.

**RYDER LAST MILE, INC. et al.,**

Defendants.

No. 3:22-cv-00094-AR

OPINION AND ORDER

**MOSMAN, J.,**

On October 13, 2022, Magistrate Judge Jeffrey Armistead issued his Findings and Recommendation (“F&R”) [ECF 23], recommending that Defendant Ryder Last Mile, Inc.’s Partial Motion to Dismiss [ECF 12] be granted in part and denied in part. Neither party filed objections.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of


the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

### CONCLUSION

Upon review, I agree with Judge Armistead's recommendation, and I ADOPT the F&R [ECF 23] as my own opinion. Defendant's Motion to Dismiss [ECF 12] is DENIED as to Claim 2 and Claim 3. Defendant's Motion to Dismiss is GRANTED as to Claim 4.

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of January, 2023.

  
MICHAEL W. MOSMAN  
Senior United States District Judge